

SENATE FLOOR AMENDMENTS

Amendments proposed by Senator Morrell to Reengrossed House Bill No. 606 by Representative Robideaux

AMENDMENT NO. 1

On page 1, line 2, after "To" insert "amend and reenact R.S. 47:301(4)(h) and 302(K)(5) and to"

AMENDMENT NO. 2

On page 1, line 2, after "R.S. 47:" insert "301(4)(m) and"

AMENDMENT NO. 3

On page 1, line 4, after "definitions;" insert "to provide with respect to dealers; to provide for certain definitions; to provide a method for reporting and remitting taxes by certain dealers;"

AMENDMENT NO. 4

On page 1, line 7, after "R.S. 47:" insert "301(4)(h) and 302(K)(5) are hereby amended and reenacted and R.S. 47:301(4)(m) and"

AMENDMENT NO. 5

On page 1, line 7, change "is" to "are"

AMENDMENT NO. 6

On page 1, between lines 7 and 8, insert the following:

§301. Definitions
As used in this Chapter the following words, terms, and phrases have the meaning ascribed to them in this Section, unless the context clearly indicates a different meaning:

* * *

(4) "Dealer" includes every person who manufactures or produces tangible personal property for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction. "Dealer" is further defined to mean:

* * *

(h) Any person engaging in business in the taxing jurisdiction. "Engaging in business in the taxing jurisdiction" means and includes any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse, or other place or location of business, or by having an agent, salesman, independent contractor, or solicitor operating within the taxing jurisdiction under the authority of or through an agreement with the seller or its subsidiary irrespective of whether such place of business, agent, salesman, or solicitor is located in such taxing jurisdiction permanently or temporarily or whether such seller or subsidiary is qualified to do business in such taxing jurisdiction, or any person who makes deliveries of tangible personal property into the taxing jurisdiction other than by a common or contract carrier. "Engaging in business in the taxing jurisdiction" also means and includes the solicitation of business through an independent contractor or any other representative pursuant to an agreement with a Louisiana resident or business under which the resident or business, for a commission, referral fee, or other consideration

1 of any kind, directly or indirectly refers potential customers, whether by link on an
2 Internet website or otherwise, to the seller.

3 * * *

4 (m)(i) Any person selling tangible property or services, the use of which is
5 taxed pursuant to this Chapter, who:

6 (aa) Sells the same or substantially similar line of products as a Louisiana
7 retailer under the same or substantially similar business name, using the same
8 trademarks, service marks, or trade names that are the same or substantially similar
9 to those used by the Louisiana retailer.

10 (bb) Uses the facilities or employees of a Louisiana retailer to advertise or
11 promote sales by the person to Louisiana purchasers, or to facilitate returns, issuance
12 of refunds or credits, or adjustments on property sold by the person.

13 (cc) Solicits business and develops and maintains a market in Louisiana
14 through an agent, salesman, independent contractor, solicitor, or other representative
15 pursuant to an agreement with a Louisiana resident or business, hereinafter referred
16 to collectively as "affiliated agent" under which the affiliated agent, for a
17 commission, referral fee, or other consideration of any kind engages in activities in
18 this state that inure to the benefit of the person in the person's development or
19 maintenance of a market for its goods or services in the state, to the extent that those
20 activities of the affiliated agent are sufficient to satisfy the nexus requirement of the
21 United States Constitution. For purposes of this Subparagraph, such activities of the
22 affiliated agent shall include referral of potential customers to the person, either
23 directly or indirectly, whether by link on an Internet website or otherwise.

24 (ii)(aa) In addition to those persons established as dealers according to Item
25 (i) of this Subparagraph, the provisions of this Subparagraph shall be presumed by
26 the taxing authority to apply to any person who holds a substantial ownership
27 interest, directly or through a subsidiary, in a retailer maintaining sales locations in
28 Louisiana; or to any person who is owned in whole or in substantial part by a retailer
29 maintaining sales locations in Louisiana, or by a parent or subsidiary thereof.

30 (bb) For the purposes of this Subparagraph, "substantial ownership interest"
31 means affiliated persons with respect to each other where one of such persons has an
32 ownership interest of more than five percent, whether direct or indirect, in the other,
33 or where an ownership interest of more than five percent, whether direct or indirect,
34 is held in each of such persons by another person or by a group of other persons
35 which are affiliated persons with respect to each other.

36 (iii) A dealer, as defined in and for purposes of this Subparagraph, shall file
37 all applicable sales and use tax returns and remittances through the electronic filing
38 options available for such purposes. Further, such dealer shall not be authorized to
39 collect the tax authorized by R.S. 47:302(K)(5).

40 (iv) The provisions of this Subparagraph holding that certain business
41 activities conducted by certain persons establishes the person as a dealer for purposes
42 of sales and use tax levied by the state and its political subdivisions, shall not be used
43 in the determination of whether such persons are liable for the payment of income
44 and franchise taxes levied by the state.

45 * * *

46 §302. Imposition of tax

47 * * *

48 K. An additional tax shall be levied as follows:

49 * * *

50 (5) The tax levied under this Subsection shall be levied and collected only
51 from vendors who qualify as a "dealer" in this state solely by virtue of engaging in
52 regular or systematic solicitation of a consumer market in this state by the
53 distribution of catalogs, periodicals, advertising fliers, or other advertising, or by
54 means of print, radio, or television media, including but not limited to television
55 shopping channels, by mail, telegraphy, telephone, computer database, cable, optic,
56 microwave, or other communication system. The provisions of this Subparagraph
57 shall not apply to any dealer defined in R.S. 47:301(4)(m).

58 * * *

1 AMENDMENT NO. 7

2 On page 1, between lines 18 and 19, insert the following:

3 "Section 2. The provisions of this Act shall apply prospectively."

4 AMENDMENT NO. 8

5 On page 1, line 19, change "Section 2." to "Section 3."